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File No. C. Official Trustees/45

Legal Department
A **BRANCH**

Subject:— Opinions under the Official Trustees Act, 1913.

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Office of the R.L.A.

The first question for the consideration of the R.L.A. is whether the official Trustee and the Administrator General can be required to furnish security.

The Official Trustee and the Administrator General have each been made a corporation sole ~~xx~~ under section 6 if the Official Trustees Act, 1913 and section 5 of the Administrator General Act, 1913 respectively, and the revenues of the Government have been made liable to make good all sums required to discharge any liability for the acts of the official Trustee and the Administrator General as agents of corporation sole. (See section 15 of the Official Trustees Act and section 39 of the Administrator General Act). An express provision ~~xxx~~ has been ~~xx~~ made in both the Acts for no security being furnished t o the Court by the Official Trustee and the Administrator General (See section 13 of the Official Trustees Act and section 29 of the Administrator General Act) the reason being that the revenues of the Government ~~x~~ were liable for the misdeeds of the official Trustee and the Administrator General; but the fact that no security can be demanded by Court from the Official Trustee and the Administrator General does not in my opinion preclude Government from demanding security from them to safeguard its interest in the event of its being liable to to make good the loss caused by their misdeeds. Consequently it would seem competent for Government to require both the official Trustee and the Administrator General to furnish security.

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The next question for consideration is whether the present incumbents of those offices can be required to furnish security.

Ordinarily delay in demanding security would not depri e Government of its ri-ht to demand security. It is not known whether there was anything in the circumstances or terms of the present incumbents' appointments which would preclude Government from exercising their right.

Id' - P.N.M.
19/3/45

Remembrancer of Legal Affairs.

U.O. to H.D. No. 2218, dated the 20th March 1945.

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R.I. No. 5670 dated 6.7.1945.

Submitted with reference to para. 5 of H.D. note dated 5-7-1945 (p.78 ante).

2. With reference to para. 4 of the letter of the Administrator General and Official Trustee, Bombay, No. 1604, dated 23-6-1945 (pp. 73-75 ante), the R.L.A. has been requested by H.D. to advise again whether the investment of trust funds and choice of brokers can be legallyx entrusted by the Official Trustee to the Reserve Bank (vide R.L.A.'s opinion No. 7986, dated 3-11-1943).

3. In R.L.A's opinion No. 7986, dated the 3rd November 1943, the R.L.A. has already held that "since the Reserve Bank is competent under s. 17(11) of the Reserve Bank of India Act, 1935, to act as agent on behalf of Govt. for the sale and purchase of securities and since the securities are in its safe custody, there appears no objection to the Administrator and Official Trustee, appointing the Bank as agent to sell and purchase securities deposited with it. The Reserve Bank would be responsible to the Administrator General and Official Trustee, for the acts of its sub-agents, the brokers. Thus, the ix investment of trust funds and choice of brokers can be legally entrusted by the Administrator General and Official Trustee, Bombay, for the reasons given in para. 4 of his letter No. 1604, d dated 23-6-1945 (pp. 73-75) the reasons are that the investment of turst funds and the choice of a broker are duties of the turstee involving discretion and could not amount to ministerial acts only. As such duties involving discretion they cannot be entrusted by the trustee to an outsidor. In support of this view, he has quoted certain passages in Underhill's Law of Trusts and Trustees, 8th Edition, Lewin on Trusts, 14th Edition and 60 Cal. p. 111 I.L.R.

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3. The above reasons correspond to s. 47 of the Indian Trusts Act 1882. Pl. see s.30 (2)(b) of the official Trustees Act, 1913, read with p.20 of the Indian Trusts Act 1882, and s. 50(2)(b) of the Admn. General's Act, 1913, Rule 10 read with rule 9 of the official Trustees (Bombay Rules, 1922 and Rule 20 of the Administrator General's (Bombay) Rules, 1922, authorise the official Trustee and Administrator General to invest trust moneys, that is to say, the investment is in the discretion of the Official Trustee and the Administrator General. Under s. 7(2) of the Official Trustees Act, 1913, save as expressly provided, the Official Trustee has the same powers, duties and liabilities and is entitled to the same rights and privileges and is subject to the same control and otders of the Court, as any other trustee ~~x~~ acting in the same capacity. Accordingly under s.29 of I.T. Act, 1882, he is authorised to invest Trusts Moneys with him. As observed in para. 3 of R.L.A's No. 7986 dated 3-11-1943, independently of the statutory provisions etc. a trustee may employ inter alia A BANKER TO ACT for him in affairs of the turst and to receive and hold trust money and property ~~xxxxxxx~~ where he is obliged to do so by common usage, and would if he were a prudent man of business do so in a similar affairs of his own. In every case the trustee must emply him only so far as the matter properly lies within his professional capacity or his position as agent and so long as the matter ~~xx~~ requires. Accordingly, the employment of the Reserve Bank by the Administrator General and Official Trustee, as his agent for the purchase or sale of Govt. securities in its custody under rule 11 of the O.T. (Bombay) Rules, 1922 and rule 22 of the Administrator General's (Bombay) Rules, 1922, would amount to the delegation of his duty for the purpose of investment of trust moneys in his charge, which is necessary, within the ~~xx~~ merit of s. 4) of the I.T. Act, 1882, and he would not be liable for the loss.

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Therefore even assuming that the investment of trust funds and the choice of the brokers are duties of the trustee involving discretion and not merely ministerial acts, the appointment of the Reserve Bank o by him for that purpose in the present case, would be legally in order under sec. 47 of the I.T. Act, 1882, As observed by the R.L.A. the brokers of the Bank, would be merely sub-agents of the Bank and the primary liability for purposes of the investment would be that of the Bank. Thus, the investment of trust funds and choice of brokers can be legally entrusted by the Advocate General and Official Trustee to the Reserve Bank. The reasons given in para 4 of the letter of the Advocate General and O.T. Bombay (p. 75), which are similar to those mentioned in sec. 47 of the I.T. Act, 1882, would not come in the way of such entrustment.

Id/- R.D.P.
21/7/45

A.A.L.R. The view taken by H.D. on all the points raised by the Administrator General and the Official Trustee is correct. I fail to understand how the appointment of the Reserve Bank as agent would not be a proper exercise of discretion vested in the Administrator General and the Official Trustee. This point is fully considered by the R.L.A. in his opinion No. 7986 dated 3-11-1943, besides the Administrator General and the Official trustee is bound by the statutory provisions and cannot be treated like an ordinary trustee. The view taken by the R.L.A in the aforesaid opinion is in no way in consistant with the authorties quoted by the Administrator General and the Official Trustee. Papers may be seen and returned.

Id/- R.T.K.
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R.L.A. I agree Reply as proposed I regret the delayin disposal on account of purposes of urgent work.

Id/- P.N.M.
10/8/45

Office of the R.L.A.

Seen and passed on to F.D.

Id/- P.N.M.
18/8/45

Remembrancer of Legal Affairs.

U.R. to F.D. No. 6140 dated 20-8-1945.

4 c.
V,R.K.
11/7/56